

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:OHI:CIN:TL-N-198-99
JEKagy

date: **FEB 16 1999**

to: Chief, Examination Division, Ohio District
ATTN: Sheryl Stonecipher

from: Assistant District Counsel, Ohio District

subject: [REDACTED]

Attached is a draft copy of a Closing Agreement on Final Determination Covering Specific Matters regarding the taxpayer noted above. As currently drafted, the agreement disposes of the issues raised regarding the Estate's claimed marital deduction. Because the resolution could affect the tax liability of the surviving spouse and the right of recovery from the assets held by the QTIP Trust, we have drafted the agreement to require not only the signature of the Estate's personal representative, but the signature of the surviving spouse in her personal capacity and that of the trustee of the QTIP Trust. As you are aware, this draft closing agreement incorporates many of the ideas discussed previously with John MacEachen (CC:DOM:FS) regarding the section 2056(b)(7) issue.

There are several procedural matters which we call to your attention. First, if any of the signing parties will be signing through a power of attorney, a copy of the Power of Attorney Form should be attached to the agreement. A Form 2848, Power of Attorney and Declaration of Representative is sufficient for this purpose. If a party seeks to offer a power of attorney form other than a Form 2848, however, you must examine the form carefully to make sure the form properly authorizes the signing of the agreement. If you have questions regarding the form offered on behalf of any of the signatories to the agreement, please contact us for assistance.

Second, since the closing agreement must be executed on behalf of the Estate, we must be certain that the party signing has been officially appointed and has been made responsible for the disposition of the matter. To that extent, you should secure an attested copy of the letters testamentary or the order of the court which vests the signing party with the authority to so act. In addition, you should attach to the closing agreement a recent certificate verifying that the signing party's authority remains

in full force and effect. As currently drafted, the agreement anticipates that the surviving spouse will be signing for the Estate, and to that end, we have identified the surviving spouse as the personal representative of the Estate. If someone other than the surviving spouse will be signing on behalf of the Estate, or if the surviving spouse has been named either executor/executrix or administrator/administratrix of the Estate, the title change should be made throughout the document.

Finally, since the Trustee of the QTIP Trust must also sign the agreement and the Trustee is a banking corporation, you should secure proof that the party signing on behalf of the Trustee is authorized to do so. A Form 56, Notice Concerning Fiduciary Relationship, is sufficient to establish the signer's authority. Parenthetically, we note that the file already contains a copy of the Trust document which sets forth the beneficiaries of the trust and appoints the Trustee with a number of appropriate powers, including the power over Federal estate tax matters. We are also aware of your continued discussions with all of the parties which have established that the Trustee is still acting in that capacity.

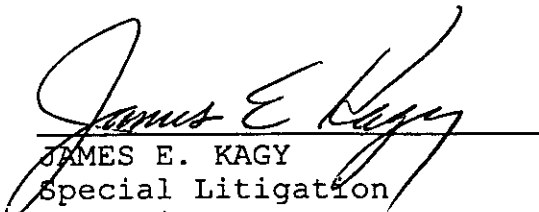
Our only concern at this juncture is that the closing agreement purports to "resolve all Federal estate and gift tax disputes" between the Estate and the Commissioner "concerning the marital deduction claimed." It is our understanding that you may be considering other potential adjustments to the claimed marital deduction, although not regarding the closely held corporations which are the subject of the closing agreement. If that is the case, we should either resolve those other adjustments as part of the closing agreement or specifically reserve them as not being addressed by the closing agreement. The decision of whether to include and resolve these other issues is a matter which you should resolve through discussions with your manager and the Estate's representative. Please let us know how you resolve the other issues and we will assist you in the modification of the draft closing agreement to reflect your handling of the other issues.

For your convenience, in addition to the printed copy of the draft closing agreement, we are enclosing two disks, each of which contains the draft document, stored in WordPerfect 8.0, but which is readable in WordPerfect 8.0, WordPerfect 7.0 or WordPerfect 6.0. You are free to provide one of the disks to the Estate's representative as you see fit.

Please feel free to contact us with any further questions you may have concerning this matter.

MATTHEW J. FRITZ
Assistant District Counsel

By:


JAMES E. KAGY
Special Litigation
Assistant

Attachments:
As stated.